

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF TENNESSEE
3 AT GREENEVILLE
4

5 UNITED STATES OF AMERICA,

6
7 PLAINTIFF,

8
9 VS

CA: 2:11-CR-81

10
11 BUFORD W. ROGERS AND RODNEY E. TULLOCK,

12
13 DEFENDANTS.
14

15 PRETRIAL CONFERENCE AND MOTION HEARING

16 HONORABLE DENNIS H. INMAN, PRESIDING

17 HEARD ON DECEMBER 7, 2011
18
19

20 APPEARANCES:

21 FOR PLAINTIFF: CARYN L. HEBETS, ESQ.

22 FOR DEFENDANT ROGERS:

23 DAVID L. LEONARD, ESQ.

24 FOR DEFENDANT TULLOCK:

25 ERIC D. REACH, ESQ.

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1 This cause came on to be heard on this the
2 7th of December, 2011 in the United States District
3 Court, Eastern District of Tennessee at Greeneville,
4 before the Honorable Dennis H. Inman. Present and
5 representing the Plaintiff was Caryn L. Hebets.
6 Present and representing Defendant Rogers was David
7 L. Leonard. Present and representing Defendant
8 Tullock was Eric Reach.

9
10 The following matters were presented, to-
11 wit:

12
13 CLERK: All rise. United States District
14 Court for the Eastern District of Tennessee, the
15 Honorable Dennis H. Inman presiding, is now in
16 session. Please be seated.

17 THE COURT: All right.

18 CLERK: Case Number 2:11-CR-81, United
19 States of America Versus Buford W. Rogers and Rodney
20 E. Tullock.

21 THE COURT: Ms. Headon is desirous of
22 filing the Final Pretrial Order and in that regard,
23 wants to know if everyone's best estimate is still
24 three weeks on the current conditions.

25 MS. HEBETS: Your Honor, I think that's,

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1 under current conditions, still an appropriate
2 estimate.

3 THE COURT: All right.

4 MR. LEONARD: Your Honor, there is a - I
5 believe on behalf of Charles Parker there is a Motion
6 to Continue filed. When is the Court going to take
7 that up?

8 THE COURT: I'm sorry. Mr. Leonard, say
9 again.

10 MR. LEONARD: There is a - on behalf of Mr.
11 Parker there was a Motion to Continue the trial date
12 filed, and I, the name of his attorney escapes me,
13 but when is the Court going to take that matter up?

14 UNIDENTIFIED: That's Francis (INAUDIBLE).

15 THE COURT: I don't know.

16 MR. LEONARD: Okay.

17 THE COURT: I mean, I'm not - that's,
18 that's a, that's truthful; I don't know.

19 CLERK: Do you want me to find that for
20 you? Do you want me to find that for you?

21 THE COURT: That motion? No. I've got it
22 in there. That's okay. Okay. I, let's see. First
23 of all, with respect to Mr. Leonard's motions, apart
24 from his Motion to Suppress, do either of you, Ms.
25 Hebets, Mr. Leonard, want to say anything?

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1 MS. HEBETS: Nothing from the United States,
2 Your Honor.

3 MR. LEONARD: Nothing further, Your Honor.

4 THE COURT: Which leaves us with three
5 Motions to Suppress, right?

6 MS. HEBETS: Four.

7 THE COURT: Four?

8 MS. HEBETS: Well - yes. You haven't
9 withdrawn your motion, have you?

10 MR. LEONARD: No. Your Honor, on the
11 motion concerning the search of the storage facility
12 in Knox County, there is a little footnote on the
13 first page of my memorandum talking about the
14 standing issue. The discovery in this case is
15 voluminous, and I did see in the discovery where it
16 was alleged that Mr. Rogers was only an emergency
17 contact on, on the lease agreement for the facility.
18 I could not find any indication that he was an owner
19 of the storage unit or the actual person leasing the
20 storage unit, so I did file this in an abundance of
21 caution to give Mr. Rogers a fair shake at this, and
22 certainly we can rely upon the motion and memorandum
23 that I filed and the response by Ms. Hebets. I don't
24 think there's any need for further argument on that.
25 It is a standing issue, and I'm not going to withdraw

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1 the motion, but I think there's enough information
2 for you to rule on that issue.

3 THE COURT: Okay. But can I, can I say,
4 state in my R&R that you agree that he was, in fact,
5 only an emergency contact...?

6 MR. LEONARD: Yes.

7 THE COURT: ...and not...?

8 MR. LEONARD: That's correct.

9 THE COURT: Okay. He was not the lessee.
10 Who was the lessee, if that matters? Is the lease
11 agreement an exhibit to anything?

12 MS. HEBETS: It is not an exhibit to any of
13 the documents filed. I do have a copy of it in the
14 Courtroom, and it provides that the occupant is a
15 Susan Derfone and I can, if the Court would indulge
16 me to use the copier, can make a copy and submit it.

17 THE COURT: Well, I don't - okay. It's not
18 important who it is. Suffice it to say that the
19 actual lease agreement lists somebody other Mr.
20 Rogers as the tenant?

21 MS. HEBETS: Yes, Your Honor.

22 THE COURT: Okay. Well, does anyone have
23 any particular preference what order we take these
24 Motions to Suppress?

25 MS. HEBETS: Your Honor, I would ask the

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1 Court to allow me to address the, Mr. Tullock's
2 Motion to Suppress the traffic stop, only because the
3 trooper is from Nashville, and he's concerned about
4 waiting too long, delaying too long in order to
5 travel back, given the weather conditions that's, I
6 guess, are moving this way from the western...

7 THE COURT: They move...

8 MS. HEBETS: ...part of the state.

9 THE COURT: They move west to east around
10 here.

11 MS. HEBETS: Yes.

12 THE COURT: That's right. Fair enough. So
13 let's call this one then. This will be Mr. Tullock's
14 Motion to Suppress. That is the one, isn't it?

15 MS. HEBETS: Mr. Tullock's Motion to
16 Suppress, yes. It's, I believe it was Document 266?

17 MR. REACH: Yes, Your Honor, 266.

18 THE COURT: Okay.

19 MS. HEBETS: And the United States calls
20 Trooper Jacob Stielow.

21 THE COURT: Let's see. Is the - will he,
22 will the Trooper be the only witness for the
23 Government?

24 MS. HEBETS: Yes. There are additional
25 facts in the response, but they're not pertinent to

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1 the traffic stop.

2 THE COURT: Okay. Mr. Reach, do you have
3 any witnesses you're going to call in that regard?

4 MR. REACH: No, Your Honor.

5 THE COURT: Okay. So the Rule is
6 irrelevant?

7 MS. HEBETS: Correct.

8
9 (WITNESS IS SWORN)

10
11 CLERK: Have a seat. What is your last
12 name?

13 TROOPER STIELOW: Last name is Stielow.

14 CLERK: Stielow, S-T-I-E-L-O-W?

15 TROOPER STIELOW: Yes, Ma'am, I-E-O-W.
16
17
18
19
20
21
22
23
24
25

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1 TROOPER JACOB STIELOW, after first being
2 duly sworn, testified as follows:

3
4 DIRECT EXAMINATION BY MS. HEBETS:

5
6 Q. Could you state your name for the
7 record?

8 A. Trooper Jacob S. Stielow.

9 Q. And how do you spell your last name?

10 A. S-T-I-E-L-O-W.

11 Q. How are you employed?

12 A. I'm a Trooper with the Tennessee
13 Highway Patrol.

14 Q. How long have you been with the
15 Tennessee Highway Patrol?

16 A. Since January of 2005.

17 Q. Were you a police officer before that?

18 A. I was a deputy with the Knox County
19 Sheriff's Department.

20 Q. So how long in total have you been a
21 law enforcement officer?

22 A. Seven years.

23 Q. Okay. And with the Highway Patrol,
24 Tennessee Highway Patrol, what are your primary
25 responsibilities?

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1 A. Traffic enforcement, working crashes,
2 writing tickets, trying to make the highway a safer
3 place.

4 Q. Okay. Now one of the offenses, are
5 you familiar with following too closely?

6 A. Yes, Ma'am.

7 Q. And could you - is that, in fact, a
8 violation of the Tennessee Code?

9 A. Yes, Ma'am. I believe it's 55.8.124,
10 if I'm not mistaken.

11 Q. And what exactly does that entail?

12 A. It basically states that a driver of a
13 vehicle shall not follow another vehicle more closely
14 than is reasonable, based on speed, weather
15 conditions, road conditions, that, you know, if
16 you're hauling a trailer, you know, size of your
17 vehicle, size of the load you're hauling, you know,
18 if you've got a load in the back of pickup.
19 Basically it's a lot of different conditions based on
20 that TCA.

21 Q. And as your, in your seven years of
22 experience have you written tickets for following too
23 closely?

24 A. Absolutely. I've written, we call
25 them hard copies, which is the copies that will go

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1 to, you know, the Court, warning tickets, both.

2 Q. Okay.

3 A. It's a common occurrence for crashes.
4 It's one of the leading reasons for, you know, rear
5 end collisions, is following too closely.

6 Q. Okay. And just before we get into the
7 facts of this case, could you give the Court an
8 estimate of how many traffic stops you're involved
9 in, you were involved in on a daily basis back in
10 2010?

11 A. Anywhere from, on a slow day, maybe
12 eight, on a busy day, twenty plus.

13 THE COURT: How many? I mean, what? What?

14 A. Seven, you know, on a slow day. If
15 I'm really out there humping it, twenty plus.

16 THE COURT: Okay. Tickets or crashes?

17 A. No, no. Stops.

18 Q. Traffic stops.

19 THE COURT: Stops? Excuse me.

20 A. Yes, Sir. Stops.

21 Q. Now do you recall the date of April
22 21st of 2010?

23 A. Yes, Ma'am.

24 Q. And were you working as a Highway
25 Patrol Officer on that date, a trooper?

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1 A. Yes, Ma'am.

2 Q. Where were you stationed at that
3 point?

4 A. In the Fall Branch District. You
5 know, we work a lot of different counties, you know.
6 My actual assignment was Washington County, but, you
7 know, we worked multiple, as Washington County based
8 on troop levels, you know. If there was work over in
9 Greene County we'd come over in Greene County. We'd
10 work Carter County or, so, my actual assignment was a
11 Washington County Trooper. On this date, I think, I
12 was in Greene County.

13 Q. Okay. So you were in Greene County?
14 And do you have a specific recollection of a
15 conversation with the TBI Special Agent Chucky
16 Wilhoit regarding a particular vehicle?

17 A. I remember talking to Agent Wilhoit.
18 The specifics of the conversation I don't recall.

19 Q. Okay.

20 A. I, you know, basically just
21 generalities. You know, if you're working over here,
22 if you see this vehicle, you know, we'd be interested
23 in if it was stopped, you know, what you found. But,
24 you know, we don't have any specific information, and
25 if you are going to - if you do see it, you know, get

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1 your own probable cause and...

2 Q. Okay.

3 A. ...that type of thing, but nothing
4 specifics. It's hard to remember that far back.

5 Q. Okay. Now did you, in fact, come
6 across this vehicle mentioned to you by Agent
7 Wilhoit?

8 A. Yes, Ma'am.

9 Q. And what type of vehicle was it?

10 A. I believe it was a maroon, a maroon
11 van. I don't remember the exact make, Chevy van.

12 Q. Can you tell the Court where you first
13 were when you saw that van?

14 A. I was out on Highway 321. It's an
15 area I used to work quite a bit when I was over here.
16 We worked state routes a lot.

17 Q. Okay. And specifically on 321, do you
18 know where you were?

19 A. I don't know exactly where I was. No,
20 Ma'am.

21 Q. Okay.

22 A. I don't remember where.

23 THE COURT: The highway between Greeneville
24 and Newport?

25 A. Yes, Sir.

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1 Q. And what was your first observation of
2 this van?

3 A. I, I don't remember my first
4 observation, you know, initially when I saw it. I do
5 remember after seeing it thinking, wow, that van is
6 really close to the vehicle in front of it. Pulled
7 it over shortly after that, and it seems like, and I
8 don't know exactly how the stop went, but I remember
9 thinking that we were not in a good place where the
10 actual, where the stop, the initial stop took place,
11 and we moved from there to a safer location. That,
12 you know, sometimes those old highways out here,
13 there's no shoulder and curvy roads, and it's just,
14 it's not a good...

15 Q. For safety...

16 A. It's a good way to get somebody hurt.

17 Q. For safety issues you moved?

18 A. Absolutely. So the stop
19 was moved from where the initial stop took place.

20 Q. Okay. Now you said you observed the
21 van following closely the vehicle in front of it,
22 correct?

23 A. Yes, Ma'am.

24 Q. And did you make a determination that
25 it was too close to the vehicle in front of it?

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1 A. Yes, Ma'am. I based that
2 determination on, you know, a number of factors.
3 Everything's going to be taken into consideration,
4 the speed of the vehicles, the condition of the
5 roadway. But my main thing I look at is, if the
6 vehicle that's following the vehicle in front of it,
7 if that front vehicle has to make a dynamic stop, say
8 a kid running out chasing a ball in front of it, a
9 deer running out, you know, somebody pulling out
10 really quickly from a side road, if something happens
11 and that front vehicle has to make a dynamic stop, is
12 there enough room for that vehicle following it to
13 get stopped without striking that vehicle that had to
14 stop instantly. So that's really, and you know, that
15 can be, you know, even if you're traveling twenty-
16 five miles per hour, if you're right on somebody's
17 bumper and they have to stop you're not going to get
18 stopped in time. Or if you're traveling seventy
19 miles per hour, it's the same thing. The distances
20 are going to change, but that's really what I look
21 for, is based on the distance at that time, could the
22 vehicle in front get stopped to a complete stop
23 without being struck by the vehicle that's following
24 it, and based on that I determined that that was,
25 that was not the case in the particular instance.

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1 Q. And that's why you engaged in a, or
2 conducted a traffic stop on the van?

3 A. Yes, Ma'am.

4 Q. And you, in fact, wrote a warning
5 ticket to the driver, Mr. Tullock, correct?

6 A. Yes, Ma'am.

7 Q. And I have a copy of that warning
8 ticket. I know you have the original,...

9 A. Yes, Ma'am.

10 Q. ...but we'll just use the copy for the
11 Court purposes, that I'd like to submit as Exhibit 1.

12
13 (WHEREUPON, EXHIBIT NUMBER 1, Copy of Warning Ticket
14 Issued to Mr. Tullock, IS ADMITTED)

15
16 Q. And during the traffic stop, did you
17 notice anything particular about the driver, Mr.
18 Tullock?

19 A. Just, nothing, you know, really
20 overtly. He was a little nervous, and we had a
21 conversation about his nervousness. Well, I mean,
22 anybody that gets stopped, I get stopped I'm going to
23 get nervous instantly. A lot of times as the traffic
24 stop progresses that nerves, it'll slowly decrease,
25 and especially if you're, you know, I mean, as far as

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1 troopers go people think, well, you get pulled over
2 by a trooper you're going to get a ticket. I mean,
3 that's just, that's the bottom line. And so if you
4 get issued a warning ticket, usually people are very,
5 you know, everything drops, like oh, thank you, we
6 appreciate it. So you know, the nerves never stopped
7 with Mr. Tullock, and I asked him about this, and at
8 the time I said, "Hey, you know, what's going on?"
9 He said, "Well, you know, it's just, I don't really
10 like being stopped." And I said, "Are you on any
11 prescription medications?", 'cause that can be a
12 factor in somebody's hand shaking or the signs of
13 nervousness if you're some sort of medication. He
14 said, "Yeah, I am." And I said, "Well, do you have
15 any on you?" "Yes, there's some in the vehicle."
16 "Okay, is there anything else in the vehicle?" "No,
17 no, no. I don't mess with anything else. No, I
18 don't, I don't do anything like that." "Okay. Well,
19 would you mind if I searched your vehicle?" "No, no.
20 Go ahead, go right ahead." So other than the
21 nervousness and him stating that, you know, the
22 nervousness was based on the fact that he was taking
23 prescription medication, that's about the only thing.

24 Q. I have no further questions at this
25 time, Your Honor.

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1 CROSS EXAMINATION BY MR. REACH:

2
3 Q. Trooper Stielow, what were the weather
4 conditions back on this date?

5 A. I don't remember any adverse weather
6 conditions at all. Do you mean had it been raining
7 or something like that?

8 Q. Was it raining...?

9 A. No. No.

10 Q. ...or anything like that?

11 A. No, Sir.

12 Q. And is Highway 321, was it - I know
13 you said this was a curvy road at this, coming from
14 Newport to Greeneville. At this particular section
15 when you saw him following too closely, was this a
16 curvy section or...?

17 A. Honestly, I guess, that specific
18 section I can't, I don't recall if there's a turn, a
19 curvy part right there. I can't, I don't know.

20 Q. How many tickets do you give for
21 following too closely on average a month?

22 A. Tickets or warning tickets?

23 Q. Tickets or warning tickets.

24 A. Combined?

25 Q. Combined.

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1 A. Oh, warning tickets, probably two or
2 three. Usually in order for me to give a ticket
3 that's going to cause somebody to go to Court over
4 it, it'll usually be the result of a crash. If the
5 following too closely results in a crash occurring, I
6 will issue a ticket for the following too closely
7 violation. If I stop somebody just to say hey, back
8 up a little bit. You know, you're going to, you're
9 too close to them. You're going to cause a crash.
10 You know, just watch, watch what you're doing, that's
11 when I'll issue a warning ticket. You know, it has
12 to really be an egregious violation for me to issue a
13 warning, or a ticket without a crash occurring. Now,
14 the number will depend on how many crashes I work
15 that month. I would say a fair estimate would be
16 four to five a month, give or take a few. So...

17 Q. How often do you pull somebody over
18 simply for following too closely? No other traffic
19 violation?

20 A. I would say that once or twice a week.

21 Q. And this particular day you had - when
22 did you receive a - was it a phone call or a radio
23 call from TBI?

24 A. Phone call.

25 Q. Phone call?

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1 A. Uh-huh (affirmative).

2 Q. When did you receive that phone call?

3 A. The exact time I don't know. Earlier
4 in the day. I don't...

5 Q. How close in relation to the stop? Do
6 you recall?

7 A. Honestly, I have no idea.

8 Q. And were you given a description of
9 the vehicle to look at?

10 A. Yes, Sir.

11 Q. To look for?

12 A. Yes, Sir.

13 Q. Were you told a particular reason why?

14 A. No, Sir.

15 Q. Okay. So...

16 A. A lot of times, they, I mean, we do a
17 lot of these, get a lot of these phone calls, and we
18 usually don't get a lot of specifics.

19 Q. Okay. And, I mean, so you didn't
20 recall the exact conversation you had with them, but
21 was the basis that we're interested in this vehicle.
22 If you see a reason pull it over. Is that...?

23 A. That's a fair...

24 Q. ...fair assumption?

25 A. ...assumption. Yes, Sir.

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1 Q. And were you running, were you on the
2 road? Were you on the side of the road when you saw
3 Mr. Tullock's vehicle?

4 A. It seems like, and I - it seems like I
5 was stopped along 321 running radar.

6 Q. Okay. Did you run radar on Mr.
7 Tullock's vehicle?

8 A. More than likely I did. Do I remember
9 a speed? No, Sir.

10 Q. Was he - and to your recollection was
11 he going too fast?

12 A. Not to my - no. I don't remember
13 thinking he was speeding, because, you know, if he
14 was speeding I would have wrote him a speeding
15 ticket.

16 Q. Okay. And did you follow him for any
17 length of time?

18 A. I don't recall.

19 Q. Okay.

20 A. Usually I'll try to make a traffic
21 stop in a safe place, you know, but if somebody, you
22 know, needs pulled over right away, then I don't have
23 it, you know, anything to do with that.

24 Q. Do you recall approximately how far
25 behind the vehicle in front of him he was?

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1 A. An exact distance, no, Sir. Like I
2 said, I just based it on at that time. When I see
3 the vehicles, do I believe that if something happened
4 right then the vehicle that's following, could they
5 come to a stop in order to avoid hitting the vehicle
6 in front, so obviously that distance is going to
7 change. Like I said, if the roads are wet then
8 you're going to need to increase that distance. If
9 the roads are dry and it's - then you can maybe, you
10 know, get a little closer.

11 Q. Okay.

12 A. It's a lot of officer discretion
13 involved in that.

14 Q. That was my next question, was the
15 reasonable and prudent standard of this particular
16 statute, would you agree that it provides for a wide
17 range of opinions on what is reasonable and prudent?

18 A. Absolutely.

19 Q. You may look at it as a trooper and
20 see that, yes, it is, and another trooper may say no,
21 that's not.

22 A. I think that it's - that's absolutely
23 fair.

24 Q. Okay. The statute, it's very broad
25 discretion?

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1 A. I think it's - yes, and I think it's
2 meant to be, was written to be, to allow for a lot of
3 officer discretion because of all the variables that
4 go into, you know,...

5 Q. Okay.

6 A. ...how that's affected.

7 Q. Was the vehicle in front of Mr.
8 Tullock that he was following too closely, was it -
9 do you recall anything about it braking, or was it
10 slowing down or...?

11 A. I don't recall anything.

12 Q. Okay. Did you observe the vehicle in
13 front of him at all?

14 A. Oh, absolutely.

15 Q. Okay.

16 A. But I don't remember, I mean, was it,
17 was it stopping? I, no, I don't remember it stopping
18 to make a turn or anything.

19 Q. Do you know if this particular section
20 of road, the speed limit slows down?

21 A. I think there's a few different speed
22 limits on 321. I think it changes once you get into
23 the city limits, and then as you get out further
24 towards Cocke County it speeds up a little bit 'cause
25 I think the road, if I - it's been a while since I've

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1 been out here, but I think the road widens up to a
2 four lane at some point, if I'm not mistaken, and
3 then that speed limit goes up.

4 Q. Okay. If the car in front of him had
5 been slowing down and Mr. Tullock didn't have time to
6 react, would he have been too close? Could he have
7 been too close specifically because of that?

8 A. Well, I think the nature of driving is
9 you need to give yourself time to react. If the car
10 in front of you is slowing down, then you need to
11 have enough space between you and that vehicle to
12 have time to react.

13 Q. But isn't there - there's a time
14 period where you have to react to it?

15 A. There's going to be...

16 Q. The car in front of you slows down?

17 A. There's going to be reactionary time
18 between seeing the actual brake lights...

19 Q. Uh-huh (affirmative).

20 A. ...and stepping on the brake pedal.

21 Q. Correct. That's...

22 A. But I think that's very, I mean,
23 that's minimal, I would assume.

24 Q. But is it possible for someone to
25 temporarily get too close to a vehicle while they're

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1 reacting to that?

2 A. I think that if you get, my personal
3 opinion is that if you get too close to the vehicle
4 based on that short reaction time, then you're too
5 close.

6 Q. Okay.

7 A. You need, you need to have enough time
8 to be able to see the brake lights and get stopped.
9 That's the nature of how accidents occur, is people
10 think, oh, I'm, I've got plenty of time. You know, I
11 mean, I've worked a ton of crashes like, "I can't
12 believe I hit them. I thought I had, I thought I had
13 plenty of room to get stopped."

14 Q. Is there any guidelines that you're
15 given as far as speed in relation to the car in front
16 of you? Is there any...?

17 A. I guess I don't really know what
18 you're asking.

19 Q. Is there a - in the driver's manual it
20 states that for every ten miles an hour at a certain
21 speed you need to be, a certain distance you need to
22 be behind.

23 A. Yeah, but again, that's just -
24 everything is based on so many different factors that
25 go into that. I mean, the grade of the road, if

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1 you're going up hill or down hill or, like I say,
2 again, if it's wet or dry or - so I think it's,
3 everything is subjective to the actual, at that
4 moment what the conditions of that roadway, that
5 actual time period of when this is happening. Is
6 that - did I answer your question?

7 Q. I - that's fine. When you pulled over
8 Mr. Tullock you ran his driver's license? Is that
9 correct?

10 A. I'm sure I probably did. Yes, Sir.

11 Q. And you were aware that he had a CDL?

12 A. Okay, yeah. Not now, but I guess at
13 the time I would have been.

14 Q. And were you aware that Mr. Tullock
15 had a good safety record on his CDL?

16 A. You know, the nature of the CDLs, is
17 those guys really try to keep their records clean, so
18 I don't recall that, but it doesn't surprise me,
19 because in order to keep their job and that CDL,
20 they're going to have to have - most companies if you
21 get very many violations at all you're gonna, you're
22 gonna lose your job, so most guys with CDLs you're
23 going to have a fairly good, clean driving history.

24 Q. Okay. And did Mr. Tullock tell you
25 that he was, that was his nervousness, was the fact

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1 that he did have a good CDL record and that he...?

2 A. I don't recall that, but I - let me
3 tell you something about truck drivers and the guys
4 with the CDLS, they are quick to tell you, I do not
5 need a ticket. I've got a good driving record, and
6 this, you know, anything you can do to help me out
7 would be greatly appreciated. So him saying that at
8 the time, I don't recall, but I'd - it wouldn't
9 surprise me if he would have said something like
10 that.

11 Q. No other questions, Your Honor.

12 MS. HEBETS: No additional questions, Your
13 Honor.

14 THE COURT: Thank you, Trooper.

15 TROOPER STIELOW: Thank you, Sir.

16 THE COURT: Well, let me ask you just one
17 quick question.

18 TROOPER STIELOW: Okay.

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1 EXAMINATION BY THE COURT:

2
3 Q. Now you had heard from Agent Wilhoit?

4 A. Yes, Sir.

5 Q. You were looking for this vehicle?

6 A. I don't believe I was looking
7 specifically for this vehicle. No, Sir, I - you
8 know, while working out there if I would have seen
9 the vehicle, then that would have, you know,
10 triggered a, like oh, that's my - that might be the
11 vehicle, you know,...

12 Q. Okay. So you...?

13 A. ...Chucky was talking about.

14 Q. All right. So when you affected this
15 traffic stop you were unaware at that time that was
16 the vehicle that Agent Wilhoit was interested in?

17 A. I, I was aware that it was a vehicle
18 close to the description that he had given me. You
19 know, but sometimes, you know, the description will
20 be, you know, look - I mean...

21 Q. Well, I guess, what I...

22 A. A gold sedan, you know, well, there's
23 a lot of gold sedans.

24 Q. Was your, was your traffic stop
25 pretextual because you were attempting to assist

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1 Agent Wilhoit, or was this, was your motivation
2 purely and alone at that point the following too
3 closely?

4 A. Absolutely it was the following too
5 closely.

6 Q. Thank you.

7 MS. HEBETS: Your Honor, may this witness
8 be excused?

9 THE COURT: Yes, Sir, and watch the
10 weather. I've always wanted to tell a trooper that.

11 TROOPER STIELOW: Thank you, Your Honor.
12

13 THIS CONCLUDES THE TESTIMONY OF TROOPER JACOB STIELOW
14 AS PRESENTED IN THIS MATTER.
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1 THE COURT: Anything else?

2 MS. HEBETS: Nothing else on that motion,
3 Your Honor.

4 MR. REACH: Nothing else, Your Honor, on
5 that motion.

6 THE COURT: Well, for whatever it's worth,
7 the Tennessee Court of Criminal Appeals in 2002
8 addressed the question of whether or not the
9 following too closely statute was unconstitutionally
10 vague, and the Court of Criminal Appeals said no. So
11 I just - and frankly (PAUSE). Yeah, I think the
12 Sixth Circuit has laid this issue to rest. Yeah, the
13 Sixth Circuit settled this issue. US V Walton, 58
14 Fed. Appx. 753, 2007. They also rely upon our recent
15 decision, US V Sanford, yada, yada, yada in which we
16 upheld a probable cause ruling for following more
17 closely than is reasonably prudent in violation of
18 TCA 58-8-124, and quoting from that case, "Although
19 the statute does not define reasonably prudent, the
20 Tennessee Driver's Manual provides that a vehicle
21 should maintain at least one car length for every ten
22 miles per hour. We conclude that a panel opinion
23 further addressing these issues would serve no
24 jurisprudential purpose." So there it is. What's
25 next?

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1 MS. HEBETS: I, there are two motions left
2 with witnesses, and whichever the Court wants to take
3 first is fine with the United States.

4 THE COURT: Well, let's see. Mr. Reach,
5 does that exhaust your panoply of Motions to
6 Suppress?

7 MR. REACH: No, Your Honor. I have one of
8 the remaining motions, Your Honor.

9 THE COURT: Okay. Well, I'm just here.
10 Let's do Mr., Mr. Tullock's. This is a Motion to
11 Suppress statements to the agents when they arrived
12 at the house, right?

13 MS. HEBETS: Correct.

14 MR. REACH: Yes, Your Honor.

15 THE COURT: Okay.

16 MS. HEBETS: The United States has two
17 witnesses, Special Agent Greg Smith of the FBI and
18 Special Agent Jim Williams of the TBI.

19 THE COURT: All right. Mr. Reach, do you
20 have any witnesses that you would call?

21 MR. REACH: No, Your Honor.

22 THE COURT: Okay. Do you request the Rule?

23 MR. REACH: Yes, Your Honor.

24 THE COURT: Okay. Call a witness and
25 I'll...

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1 MS. HEBETS: The United States would call
2 Special Agent Greg Smith first since Mr. Williams is
3 closer to the door.

4 THE COURT: Okay.

5
6 (WITNESS IS SWORN)

7
8 CLERK: Please be seated.
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1 SPECIAL AGENT GREGORY SMITH, after first
2 being duly sworn, testified as follows:
3

4 DIRECT EXAMINATION BY MS. HEBETS:
5

6 Q. Can you state your name, please?

7 A. Gregory Smith.

8 Q. And common spelling?

9 A. It is.

10 Q. All right. And how are you employed?

11 A. I'm a Special Agent with the Federal
12 Bureau of Investigation.

13 Q. How long have you been with the FBI?

14 A. Over twelve years.

15 Q. And what are your responsibilities
16 with the FBI?

17 A. Primarily I'm charged with
18 investigating crimes and violation of Title 21, which
19 is the federal drug offenses.

20 Q. And how long have you been doing that?

21 A. Exclusively for the past seven, almost
22 eight years.

23 Q. Now I want to ask you about an
24 investigation you participated in back in 2000...end
25 of 2009, beginning of 2010 and through 2010, actually

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1 into 2011. Are you familiar with this investigation?

2 A. I am.

3 Q. And are you familiar with an
4 individual by the name of Rodney Tullock?

5 A. I am.

6 Q. And he's in the Courtroom seated at
7 the first table, correct?

8 A. He is.

9 Q. Did you have occasion in October of
10 last year to interview or to meet with Mr. Tullock?

11 A. I did.

12 Q. Could you tell the Court what the
13 circumstances were of that meeting?

14 A. Yes, Ma'am. Myself and ASAC Williams
15 with the TBI went to Mr. Tullock's residence after 9
16 but before ten o'clock in the morning, and knocked on
17 his door, and asked to speak with him. I believe his
18 girlfriend actually answered the door first, and we
19 asked if Mr. Tullock was present.

20 THE COURT: This is Mr. Tullock's house?

21 A. It is.

22 THE COURT: Where is it? I'm sorry?

23 A. I believe it's 925 Walker Town Road in
24 Afton, Tennessee. We knocked, I knocked - he knocked
25 on the door. I believe his girlfriend answered the

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1 door, and we asked if Mr. Tullock was at the
2 residence, and she indicated that he was, and when he
3 came to the door we asked if we could speak to him.
4 He said that we could and invited us into the
5 residence.

6 Q. Was it just the two of you?

7 A. It was just the two of us.

8 Q. Special, or Assistant Special Agent in
9 Charge? Is that...?

10 A. Correct.

11 Q. ...correct? Mr., or Williams,
12 correct?

13 A. Correct.

14 Q. Okay. Were you in uniform?

15 A. I was dressed casually. I don't have
16 a uniform per se. I was not in a suit. I was in
17 probably khakis or jeans and a collared shirt.

18 Q. And did you have your gun on you?

19 A. I had my weapon, but it wasn't out.
20 It was not visible.

21 Q. What about ASAC Williams?

22 A. I assume he had a weapon, but I don't
23 recall seeing it, so I don't believe it was visible.

24 Q. So what happened - and Mr. Tullock
25 invited you into the house. What happened then?

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1 A. He asked us to come into the first
2 room on the left, which I would call the TV room, and
3 there's two couches and a television there. The
4 television was on. We sat down, and ASAC Williams
5 basically - I'm sorry. Assistant Special Agent in
6 Charge Williams basically laid out why we were there,
7 and that we wished to speak to Mr. Tullock, and that,
8 that some of the things we may talk about may be
9 somewhat embarrassing or private, and if Mr. Tullock
10 would like, we could go for a ride in ASAC Williams'
11 vehicle or we could - if he, if he was comfortable he
12 could ask his girlfriend maybe to go shopping or to
13 give us some privacy so that we could talk to him, so
14 that he would feel more comfortable in discussing
15 some of the issues that we were going to bring up.
16 But we left it up to him decide what he wanted to do.

17 Q. And how was Mr. Tullock acting at this
18 time? Was he...?

19 A. He seemed nervous, which is not
20 uncommon. When a federal agent and a state agent
21 come to your door and want to talk to you there's a
22 tendency for someone to be nervous.

23 Q. Did he ever tell you that he didn't
24 want to talk with you?

25 A. No, Ma'am.

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1 Q. Did he ever tell you that he wanted
2 you to leave his house?

3 A. No, Ma'am.

4 Q. And, just for clarification, he was
5 not under arrest?

6 A. That's correct.

7 Q. And you, neither you or Assistant
8 Special Agent in Charge Williams read him his rights
9 per Miranda?

10 A. Correct.

11 THE COURT: I'm sorry?

12 Q. Neither of them read him his rights
13 per Miranda, and the answer is correct, right?

14 A. We did not read him his rights.

15 Q. All right. Now did Mr. Tullock agree
16 to speak with you?

17 A. He did.

18 Q. And did he resolve whether he wanted
19 to speak with you in the residence or go with you in
20 a vehicle or what to do with his girlfriend?

21 A. He said that he would ask her maybe to
22 go shopping, and he left the room for a short period
23 of time and had a conversation with her outside of
24 our presence. Came back in and indicated that she
25 was going to shopping. She came in and said goodbye

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1 to us and to Mr. Tullock, and then left the
2 residence.

3 Q. And then what happened after that?

4 A. ASAC Williams and myself began to ask
5 Mr. Tullock questions regarding his relationship with
6 one of the co-conspirators in this investigation, and
7 Mr. Tullock basically, basically detailed his
8 relationship with Mr., with one of the co-
9 conspirators and his criminal involvement with him.

10 Q. And Mr. Tullock also discussed his
11 criminal activity?

12 A. Correct.

13 Q. In the distribution of oxycodone?

14 A. That is correct.

15 Q. At any time during the conversation
16 did either you or Assistant Special Agent in Charge
17 Williams raise your voice to Mr. Tullock?

18 A. No, Ma'am.

19 Q. Threatened him in any way?

20 A. The conversation was very similar in
21 tone to the one we're having right here.

22 Q. Okay. Did Mr. Tullock appear to be
23 understanding what you were asking him?

24 A. He did.

25 Q. Was he at all under the influence of

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1 anything that you were aware of?

2 A. Not to my knowledge, and not that I
3 could ascertain by his demeanor.

4 Q. And he voluntarily answered your
5 questions?

6 A. He did.

7 Q. And provided the information?

8 A. He did.

9 Q. And in fact, he agreed to cooperate
10 with law enforcement at that time?

11 A. The interview went so well that ASAC
12 Williams and I basically asked Mr. Tullock if he
13 would consider cooperating against some of his co-
14 defendants in the process of gathering further
15 evidence, and he seemed amenable to that, and we
16 discussed what possible scenarios that might entail
17 where he would be involved.

18 Q. And what happened after that?

19 A. We left that meeting, and then we
20 agreed to meet - the meeting occurred on a Friday,
21 and we agreed to meet the following week. Myself and
22 ASAC Williams wanted it to occur earlier in the week,
23 but Mr. Tullock, I believe, had something going on,
24 so we didn't meet until Wednesday or Thursday of the
25 following week.

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1 Q. And what happened at that meeting?

2 A. We met at a park in Newport, and
3 myself, ASAC Williams and two other TBI Agents, Agent
4 McNamara and Agent Thompson, I believe, were present.
5 Mr. Tullock showed up. He got into Mr., or ASAC
6 Williams' vehicle, which is a four wheel truck, with
7 myself, ASAC Williams and another TBI Agent. I
8 believe Agent McNamara and Thompson were in the
9 conversation intermittently, both were in there
10 intermittently at this time. And Mr. Tullock had
11 some concerns about cooperating with the Government
12 at that point. He was nervous, and that's not
13 uncommon in those situations, so myself and ASAC
14 Williams had a lengthy discussion with him about his
15 concerns to see if we could overcome them or address
16 them. We were not able to do that, and he left.

17 Q. So he voluntarily showed up at the
18 second meeting with you and other agents?

19 A. He did.

20 Q. And when he said he wasn't no longer
21 interested you allowed him to leave?

22 A. Correct.

23 Q. Okay. I have no further questions at
24 this time, Your Honor.
25

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1 CROSS EXAMINATION BY MR. REACH:

2
3 Q. Agent Smith, when you arrived did both
4 of you identify yourselves as agents of the
5 Government?

6 A. Most definitely.

7 Q. Okay. And did you show your badges to
8 him?

9 A. I showed my credentials...

10 Q. Credentials?

11 A. ...with my picture, and it says
12 Special Agent for the Federal Bureau of
13 Investigation.

14 Q. Okay. And at any time was he told
15 that he was a suspect in a conspiracy?

16 A. He was told in broad terms that he'd
17 been involved with Mr. McMahan, specifically a
18 traffic stop, which I think we'd detailed earlier
19 here, and other things that would lead him to believe
20 that he was being investigated, yeah.

21 Q. Okay. And he was - you also told him
22 that the traffic stop was partially, you were behind
23 it?

24 A. ASAC Williams referenced the traffic
25 stop where he was stopped and had pills with him, in

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1 his possession.

2 Q. Okay. When you came to him and you
3 first started talking to him, did you ever tell him
4 that this is a voluntary conversation?

5 A. ASAC Williams handled the
6 conversation. I recall him saying that this was his
7 opportunity basically to help himself, and then if he
8 didn't want to talk to us that was his choice.

9 Q. Okay. Was he told at any time that he
10 could tell you to leave?

11 A. I don't remember those specific words,
12 but we did ask to be invited in and basically were
13 there at his grace at that point, and asked, you
14 know, what would he be comfortable with as the
15 interview continued forward.

16 Q. Okay. Well, was he ever told the
17 words "If you tell us to leave we'll leave"?

18 A. I don't remember that specific
19 statement, but I do know, as I said, we made
20 indications that this was a voluntary interview.

21 Q. What other indications did you make
22 this was voluntary interview?

23 A. This was his opportunity to help
24 himself out. If he didn't want to talk to us he
25 didn't have to.

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1 Q. Okay.

2 A. We'd like to continue to talk to you
3 further. We have a couple of options. What would
4 you be more comfortable with, things of that nature.

5 Q. Okay. And then you gave him two
6 options essentially; he could either go in the car
7 with you or with - inside your car, or he could ask
8 his girlfriend to leave the house?

9 A. Right.

10 Q. Either or, and rather than going in
11 the car with you he told his girlfriend to leave?

12 A. He asked her to go shopping, yes.
13 Well, I wasn't present for the conversation. He told
14 her something.

15 Q. But he - she left, one way or the
16 other?

17 A. Right.

18 Q. Do you recall, was this early in the
19 conversation that you told him...?

20 A. It was fairly early in the
21 conversation, yes. It was within the first few
22 minutes of coming into the house.

23 Q. Okay. And was the only offer made to
24 him to go for a ride in one of your vehicles?

25 A. Correct.

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1 Q. Okay. You weren't going to get in
2 his?

3 A. Probably not. No, Sir.

4 Q. Okay. And after the girlfriend left
5 the residence, and you began discussing, was that
6 when he was told the real specifics about what he was
7 there for? What you were there for?

8 A. Yeah, we, we laid out that, hey, this
9 is what we're here to talk to you about, certain
10 individuals, by name, and asked him how he knew them
11 and his relationship with them.

12 Q. Okay. Did Mr. Tullock ever tell you
13 that he had come in off the road that morning at any
14 point in time?

15 A. I recall that he was sleeping, or he
16 appeared to have been. He come out of the bedroom,
17 so I assume he was sleeping, but I don't recall him
18 telling that he'd just come off the road, no.

19 Q. Was he sleepy during your
20 conversation?

21 A. He seemed completely lucid, Sir.

22 Q. Okay. Was he ever threatened with
23 arrest?

24 A. Absolutely not.

25 Q. Okay. Was he ever told that if he

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1 didn't talk with you that it would be bad for him to
2 not talk with you?

3 A. I don't remember those specific words,
4 but I know that we, we let him know that we knew a
5 lot of his activities, so I would assume a prudent
6 man would think that he might have some negative
7 consequences.

8 Q. Okay. All right. Where were you, and
9 now I know you said this was in sort of a TV room, as
10 you called it, inside of his house.

11 A. Yes, Sir.

12 Q. Do you recall where the two of you
13 might have been sitting in relation to Mr. Tullock?

14 A. I do.

15 Q. Where were you?

16 A. If you come into his house through the
17 front door, there's a short wall, and there's a door
18 to the left. That's the room that we went into. As
19 you go into that room, at that time there was a couch
20 along that wall that I described, and that's where I
21 sat. There was a coffee table, and then there was a
22 shorter couch perpendicular to the longer couch, and
23 that's where he and ASAC Williams sat.

24 Q. Okay. Were you each of you, were each
25 of you on one side of him? Is that...?

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1 A. It was more of a, right - I was more
2 directly across from him, based on how the couches
3 were sitting, my angle of my body, and ASAC Williams
4 was next to him.

5 Q. Okay. Was he shown anything, such as
6 pictures, video, anything like that?

7 A. No.

8 Q. Okay. How long was the conversation?

9 A. As I recall, it wasn't more than an
10 hour, and part of that time, as I said, was at the
11 end we were discussing what his options might be if
12 he didn't - with regards to cooperation and giving
13 him potential scenarios as to what might happen.

14 Q. Was he told that he could say no to
15 cooperation?

16 A. Most definitely.

17 Q. No other questions, Your Honor.

18 MS. HEBETS: Just one follow up, Your
19 Honor, that I forgot to ask.
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21
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23
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25

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1 REDIRECT EXAMINATION BY MS. HEBETS:

2
3 Q. Agent Smith, if, when you knocked on
4 the door, Mr. Tullock had said I'm not interesting in
5 talking, what would you have done?

6 A. Left.

7 Q. Nothing further, Your Honor.

8
9 THIS CONCLUDES THE TESTIMONY OF SPECIAL AGENT GREGORY
10 SMITH AS PRESENTED IN THIS MATTER.

11
12 MS. HEBETS: The United States calls
13 Special Agent, or Assistant Special Agent in Charge
14 Jim Williams.

15
16 (WITNESS IS SWORN)

17
18 CLERK: Please be seated.

19
20
21
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25

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1 AGENT JIM WILLIAMS, after first being duly
2 sworn, testified as follows:

3
4 DIRECT EXAMINATION BY MS. HEBETS:

5
6 Q. Can you state your name for the
7 record, please?

8 A. My name is Jim Williams.

9 Q. And common spelling of first and
10 last...?

11 A. W-I-L-L-I-A-M-S.

12 Q. How are you employed?

13 A. I'm employed by the Tennessee Bureau
14 of Investigation.

15 Q. And what is your title?

16 A. Assistant Special Agent in Charge for
17 the Upper East Drug Investigative Division.

18 Q. What are those responsibilities?

19 A. It's basically supervising the, the
20 agents in the drug division on their day to day
21 operations and investigations.

22 Q. And...?

23 A. Assisting them on investigations and
24 filling in as needed.

25 Q. So you also participate in

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1 investigations? You're not just solely a supervisor?

2 A. That's correct.

3 Q. Okay. And how long have you been
4 working as a law enforcement agent in drug
5 trafficking investigations?

6 A. It'll be twenty years February 1st.

7 Q. Now did you participate in some degree
8 in an investigation involving Rodney Tullock and
9 others?

10 A. Yes, Ma'am.

11 Q. And specifically I want to jump right
12 to October 29th 2010. Do you recall that date?

13 A. Yes, Ma'am.

14 Q. And were you with Special Agent Smith
15 of the FBI on that date?

16 A. Yes, I was.

17 Q. Okay. What, what - can you tell the
18 Court what happened on that date as it relates to Mr.
19 Tullock?

20 A. Agent Smith and I traveled to Mr.
21 Tullock's residence on Walker Town Road here in
22 Greene County to attempt to talk to him and try to
23 interview him regarding the William McMahan
24 investigation.

25 Q. Now were you intending to arrest him

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1 on that date?

2 A. No, Ma'am, we were not.

3 Q. Okay. So what happened when you got
4 to the house?

5 A. We knocked on the door. I don't
6 recall if Mr. Tullock or the female come to the door
7 first, but we were, we were invited inside. We wound
8 up speaking to Mr. Tullock just inside the doorway.
9 Seems like there was a stairwell there besides it and
10 rooms off to each side. We told him, told him we
11 needed to talk to him, and that we, you know, it was
12 serious information we had to discuss with him. I
13 don't recall if he may have indicated that he didn't
14 want to speak in front of his wife or girlfriend; I'm
15 not sure what, what the relationship is, however, it
16 was eventually determined that she would, she would
17 leave the residence for a period of time, I think, to
18 go shopping or run some errands or something, and
19 then Agent Smith and Mr. Tullock and I sat down in
20 the living room of his residence and continued the
21 discussion.

22 Q. Let me ask you. Back when you were
23 first talking to Mr. Tullock and you explained that
24 you wanted to ask him some questions, did you tell
25 him he was under arrest?

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1 A. No, Ma'am.

2 Q. Did you tell him that he had to answer
3 your questions?

4 A. No, Ma'am.

5 Q. Did you tell him that, or did you
6 advise him of his Miranda Rights?

7 A. No, Ma'am.

8 Q. Did you tell Mr. Tullock - what did
9 you tell - let me phrase it more open ended. What
10 did you tell him with respect to his ability to talk
11 or not talk?

12 A. Told him, told him he didn't have to
13 talk to us, but we did tell him that, you know, that
14 he was potentially facing some, some problems down
15 the road, and this would be a good opportunity for
16 him, you know, to cooperate if he, if he chose to.
17 But he was told he did not have to speak to us.

18 Q. And did Mr. Tullock agree to speak to
19 you?

20 A. Yes, Ma'am.

21 Q. All right. Did he ever tell you I'm
22 not interested in talking?

23 A. No, Ma'am.

24 Q. Okay. On that date, if he had told
25 you I'm not interested in talking, what would you

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1 have done?

2 A. We would have, we would have left.

3 Q. So Mr. Tullock and you and Agent Smith
4 sit down in the living room and you speak to him
5 about his involvement in this drug trafficking,
6 correct?

7 A. Yes, Ma'am.

8 Q. And he provided information?

9 A. Yes, he did.

10 Q. During - how long did that
11 conversation last?

12 A. I don't recall exactly. I, I would
13 estimate an hour, maybe an hour and a half. It
14 wasn't a real long interview or anything like that.

15 Q. At any point during that interview did
16 Mr. Tullock tell you he was, he didn't want to answer
17 any more questions?

18 A. No, Ma'am.

19 Q. Or he didn't want to talk any more?

20 A. No, Ma'am. As a matter of fact, we,
21 we actually made arrangements to talk in the future.
22 When we left there we felt like there was a strong
23 possibility he would be, he would want to continue
24 the conversation in the future.

25 Q. Okay. Did you or Agent Smith ever

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1 threaten him in any way?

2 A. No,...

3 Q. Verbally?

4 A. No, Ma'am.

5 Q. Physically?

6 A. No, Ma'am.

7 Q. Did you ever draw your weapon?

8 A. No, Ma'am.

9 Q. Was your weapon visible?

10 A. No, Ma'am, it would not have been
11 visible.

12 Q. Okay. Did Mr. Tullock appear to
13 understand what was going on?

14 A. Yes, he did.

15 Q. Did he appear to - was he, appear
16 intoxicated at all?

17 A. No, Ma'am.

18 Q. Under the influence of any drugs of
19 any kind?

20 A. Didn't appear so, no.

21 Q. And you said that Mr. Tullock agreed
22 to meet with you at a later date, correct?

23 A. Yes.

24 Q. And did he, in fact, meet with you?

25 A. Yes, he did.

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1 Q. And what was the circumstances, or
2 what happened there?

3 A. When we left the meeting on the 29th
4 we had, or during the meeting on the 29th we'd had
5 discussions about him providing substantial
6 assistance in this investigation, and I'd given, I
7 think Agent Smith and I both had given him our phone
8 numbers, however I think he contacted me the
9 following week, and we agreed to meet in Newport.
10 The purpose, I felt like that the purpose of the
11 meeting was going to be to attempt further
12 investigation toward Mr. McMahan. We met with him at
13 a city park there in Newport. Myself and Agent Smith
14 and Agent McNamara met with him in my vehicle, and we
15 discussed did he have more questions about the way,
16 you know, the situation, what we were expecting from
17 him in terms of his cooperation and all that. I
18 don't recall how long we spoke with him, but by the
19 end of it he basically, he basically said, "Fellows,
20 I'm not going to do it." And then he got out of the
21 truck and left, and I assume went back to
22 Greeneville.

23 Q. You didn't, at that point when he said
24 he didn't want to do it, you didn't threaten him in
25 any way?

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A. No.

Q. Did you have any further contact with him?

A. No, Ma'am. I don't recall having spoken with him since.

Q. Okay. I have no further questions.

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1 CROSS EXAMINATION BY MR. REACH:

2
3 Q. Agent Williams, when you went out to
4 Mr. Tullock's house he was a suspect in a conspiracy,
5 was he not?

6 A. Yes, he was.

7 Q. And you went out there to talk with
8 him about his dealings with William McMahan, is that
9 correct?

10 A. That was, that was what we were hoping
11 would happen.

12 Q. Okay. And just to clarify, when you
13 first made contact with Mr. Tullock, did you say that
14 you had serious information to talk with him about?
15 I thought that, that was the words that you used?

16 A. I may have used that in my previous
17 testimony. I don't, I don't recall if those were my
18 exact words or not, however it would have, it
19 wouldn't surprise me if I did tell him it was
20 serious, because basically it would have been. If
21 those charges were ultimately levied against they
22 would be serious charges.

23 Q. Okay.

24 A. So it would not have surprised me to
25 have used those terms.

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1 Q. Was he ever told that he would be
2 arrested if he didn't talk with you?

3 A. No, Sir.

4 Q. Or that he would be charged with
5 something if he didn't talk with you?

6 A. No, Sir, absolutely not.

7 Q. And at some point in time was he given
8 an option to leave in a car with you? Do you recall
9 that?

10 A. He, he expressed reluctance to speak
11 in front of, and there again, I don't know if it's -
12 the, the lady, and I think we offered. Well, you
13 know, we can go, we can drive down the road and find
14 a place and sit and talk, which is not uncommon to
15 do, or we can stay here and talk. And then I think
16 he asked her to leave and, and give us, give us
17 privacy for him to talk, because I recall sitting in
18 the living room while she was getting ready, and
19 basically we just made small talk until she left, and
20 then once, once she left you could tell he was ready
21 to talk, and that's when we started the interview.

22 Q. And the total conversation lasted
23 about an hour?

24 A. That's...

25 Q. Right around?

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1 A. ...to the best of my recollection.

2 Q. Okay.

3 A. It could be more, could be less.

4 Q. Was he ever, was it ever related to
5 him that if he didn't talk to you something worse
6 could happen to him other than what he was already
7 suspected of?

8 A. No, Sir. Absolutely not.

9 Q. Where were you sitting in relation to
10 Mr. Tullock while you were inside his house?

11 A. I was sitting beside him on the couch.

12 Q. Okay. And where was Agent Smith at
13 that time?

14 A. He was across the room on a - there
15 was a - it was either a footstool or an ottoman-type
16 or some, some type of a chair across the living room.

17 Q. Okay. At any point in time was he
18 told that this is a voluntary conversation; you can
19 ask us to leave at any time?

20 A. Told him he didn't have to talk to us
21 if he didn't want to talk to us. I don't recall if
22 I, if I told him that he could tell us to leave, but
23 he was told that he didn't have to speak with us.

24 Q. No other questions, Your Honor.

25 MS. HEBETS: No further questions, Your

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1 Honor.

2
3 THIS CONCLUDES THE TESTIMONY OF ASSISTANT SPECIAL
4 AGENT JIM WILLIAMS AS PRESENTED IN THIS MATTER.

5
6 THE COURT: Any other witnesses?

7 MS. HEBETS: No, Your Honor.

8 MR. REACH: No, Your Honor.

9 THE COURT: This brings us to Mr. Leonard's
10 Motion to Suppress.

11 MR. REACH: Your Honor, may Mr. Tullock and
12 I be excused? I need to get to Johnson City for
13 another court appearance.

14 THE COURT: No problem with me.

15 MR. REACH: Thank you, Your Honor.

16 THE COURT: Ms. Hebets, you got any
17 problems with that?

18 MS. HEBETS: No, Your Honor.

19 THE COURT: Okay.

20 MR. REACH: Thank you, Your Honor.

21 THE COURT: Are we ready to proceed on this
22 motion?

23 MS. HEBETS: Yes, Your Honor.

24 THE COURT: Who's going to testify.

25 MS. HEBETS: Multiple people, Your Honor.

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1 Basically everyone who's sitting back there is a
2 potential witness except for Agent Williams.

3 THE COURT: I'm sorry. Except for who?

4 MS. HEBETS: Special Agent Williams.

5 THE COURT: Well, is the Rule requested?

6 MR. LEONARD: Yes, Your Honor.

7 THE COURT: Pick a witness, Ms. Hebets, and
8 let's excuse the rest.

9 MS. HEBETS: The United States calls Kevin
10 Poe.

11
12 (WITNESS IS SWORN)

13
14 CLERK: Please be seated.
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1 KEVIN POE, after first being duly sworn,
2 testified as follows:

3
4 DIRECT EXAMINATION BY MS. HEBETS:

5
6 Q. Can you state your name for the
7 record?

8 A. Kevin Poe.

9 Q. How do you spell your last name?

10 A. P-O-E.

11 Q. And how are you currently employed
12 right now?

13 A. I work for the Jefferson County
14 Circuit Court.

15 Q. How long have you been in that job?

16 A. A little over three months.

17 Q. Okay. Prior to that where were you
18 working?

19 A. The Jefferson County Sheriff's
20 Department.

21 Q. And how long - well, what was your
22 role at the Sheriff's Department?

23 A. I was a deputy, patrol deputy.

24 Q. And how long were you with the
25 Sheriff's Department?

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1 A. Four years.

2 Q. And I want to call your attention back
3 to May 1st of 2010. Well, let me back up. As a
4 deputy with Jefferson County what were your, what
5 were your typical responsibilities?

6 A. General public safety, which would
7 include responding to calls from the public and
8 enforcing traffic laws around the area.

9 Q. Okay. Now I call your attention back
10 to May 1st of 2010. Do you recall that date?

11 A. Yes.

12 Q. And how were you employed on that
13 date?

14 A. As a deputy with the Sheriff's
15 Department.

16 Q. Okay. Do you remember a request to
17 assist in an investigation on that date?

18 A. I do.

19 Q. And who contacted you about that?

20 A. Drug Task Force Agent Todd Coleman.

21 Q. Okay. Were you on duty already?

22 A. I was.

23 Q. And were you in a marked patrol car?

24 A. I was.

25 Q. And full uniform?

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1 A. Yes, Ma'am.

2 Q. All right. Based on what Mr., or
3 Agent Coleman told you, what, what were you intending
4 to do that day?

5 A. The information I was given that there
6 was a red GMC Silverado coming eastbound on
7 I-40, that if I could develop my own PC for the stop
8 to do so.

9 Q. Did you at any point make contact with
10 or observe this red, a red GMC pickup truck?

11 A. I did.

12 Q. And where would that have been?

13 A. I-40 at Exhibit 417, just west of
14 Exhibit 417.

15 Q. And where were you, do you recall,
16 when you observed that car, truck?

17 A. Yes, Ma'am. There's an on ramp, the
18 eastbound on ramp, shortly past the on ramp I was
19 stationary on the median, on the edge of the road, on
20 the shoulder.

21 Q. Okay. And what, if any, equipment did
22 you have in your patrol vehicle?

23 A. I had my radar, front and rear, that
24 was capable of getting the speed moving and
25 stationary, both front and rear.

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1 Q. Okay. So if I understand, if your
2 vehicle is moving you can still get a radar number or
3 target on a vehicle, another moving vehicle?

4 A. Correct.

5 Q. And if you're stationary you can also
6 use that same radar to get a speed estimate on, or a
7 speed on a moving vehicle?

8 A. Correct.

9 Q. All right. Were you operating that
10 radar on May 1st?

11 A. I was.

12 Q. Okay. And did you, in fact, use the
13 radar on the red pickup truck?

14 A. I did.

15 Q. Can you tell the Court what, based on
16 the radar, what the speed of the pickup truck was?

17 A. The first thing I did before
18 activating the radar I attempt to, to estimate the
19 speed of the vehicle to be over the posted speed
20 limit, which I did. I couldn't if the vehicle that I
21 was told, that was described to me was the vehicle or
22 not, and I estimated the vehicle's speed to be above
23 the posted speed limit, and then confirmed that with
24 the radar at 73 mile an hour in a posted 65 mile an
25 hour zone.

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1 Q. So it's 65 miles per hour there?

2 A. Yes, Ma'am.

3 Q. And were you facing in the same
4 direction the car was traveling?

5 A. I was facing eastbound. Yes, Ma'am.

6 THE COURT: I'm sorry. The radar confirmed
7 the speed at what?

8 A. Seventy-three miles an hour.

9 Q. In 65 mile per hour zone?

10 A. Yes, Ma'am.

11 Q. All right. So when you confirmed that
12 speed on the radar what did you do?

13 A. I attempted to, I let the vehicle pass
14 me, and there was ample room to get behind the
15 vehicle. I paced it for a short distance to also
16 confirm the speed to be above 65 mile an hour. Once
17 I did that and I was comfortable I initiated my
18 lights and sirens and attempted to make a traffic
19 stop.

20 Q. So you also paced the car. Could you
21 explain to the Court what that entails?

22 A. The police vehicles that we use have
23 calibrated speedometers to be accurate within
24 whatever the Department specifies, and I was behind
25 the vehicle a short distance. And if I maintain a

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1 speed of 65 mile an hour and the vehicle continues to
2 pull away from me, I will match the speed of the
3 vehicle without closing the distance to my best
4 ability, and it was way, it was over 70 mile an hour
5 that that was pacing.

6 Q. Okay. And this is a technique that
7 you, you learned and used daily in your official...?

8 A. I was not trained on it in the
9 Sheriff's Department, but prior to that, from 2001 to
10 2006 I was a military police officer, which I was
11 trained and used multiple times.

12 Q. Okay.

13 THE COURT: I submit pacing a car requires
14 no training.

15 Q. All right. So, so at this point you
16 had both the pace speed and a radar speed, correct?

17 A. Correct.

18 Q. Exceeding the 65 mile per hour speed
19 limit?

20 A. Yes, Ma'am.

21 Q. And you turn on your blue lights and
22 attempt to make a traffic stop?

23 A. That is correct.

24 Q. And what happened when you turned on
25 the lights and attempted to traffic stop the vehicle?

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1 A. There's a general response when blue
2 lights are activated that based on my experience
3 occurs, and that is usually either brake lights
4 abruptly or a blinker or I, I can usually see the
5 side view mirror and the driver will look and
6 acknowledge that I'm behind them and pull over. This
7 vehicle did not do that. Matter of fact, I recall
8 that Mr. Rogers was wearing a ball cap, because I
9 could see his eyes look at me in the rearview mirror
10 and kind of shake his head, and at that point the -
11 my, my risk factor, my meter inside me continued, you
12 know, starts to rise, and there was no action from
13 the vehicle but it continued to travel eastbound, and
14 I allowed the distance between our vehicles to
15 increase, because during the nature of traveling at
16 high speeds on the Interstate it's not uncommon for a
17 collision to occur. So I let the speed, or the
18 distance increase a little bit, and we continued
19 eastbound.

20 Q. So the Defendant, and you identified
21 him as Mr. Rogers, he's sitting in the Courtroom
22 here, correct,...?

23 A. He is. Yes, he is.

24 Q. ...made no attempt to stop his car?

25 A. Absolutely not.

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1 Q. How long did you follow him on I-40?

2 A. Shortly after I-40 we were continuing
3 eastbound, and I began to notify other officers in
4 the area that there was, that the vehicle I was
5 attempting to stop was not making any attempts to
6 stop, and other vehicles began to get involved. I
7 attempted to get in front of the vehicle to possibly
8 slow the vehicle down and allow someone else to make
9 a traffic stop or provide that safely to be done, and
10 the vehicle swerved towards my vehicle. I backed up
11 considerably at that point and made no further
12 attempt to get in front of him. We continued I-40.
13 There is a split at Interstate 81. We continued
14 northbound on 81. The vehicle passed the Exit 4 off
15 ramp shortly, and went off into the grassy area,
16 exited on Exit 4, turned right on Roy Messer Highway,
17 continued to evade. We come to the 113, Highway 113
18 intersection. He turned right, which is southbound
19 on 113, come to the inter, or Highway 25/70 cross,
20 which he disregarded the stop sign, crossed over to
21 the, over Highway 25/70, and my vehicle was an
22 Explorer, and the acceleration speed is not that of a
23 Crown Victoria. So he was, at that point, created
24 some distance between myself and him. I'd lost him
25 there for a while. He, at that point, once he

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1 crossed over 25/70 I didn't see him. I had no
2 further contact with him.

3 Q. Other officers were involved in the
4 pursuit...?

5 A. They were.

6 Q. ...at that point, correct?

7 A. Correct.

8 THE COURT: How fast did you get in all
9 this?

10 A. I, I don't have - I didn't, I didn't
11 mark. That may be on dispatch records because I
12 would have called in the speed over the, over the
13 radio, but I don't recall. My vehicle has a limiter
14 of, and I believe it's 95 mile an hour. I can't, I
15 couldn't be accurate for sure, but I do remember
16 hitting that limiter where the governor, the vehicle
17 governs back the speed at that point.

18 Q. And you were not present when the
19 vehicle eventually came to a stop?

20 A. I was not.

21 Q. Did you ever go to that scene?

22 A. I did. Shortly after it stopped we
23 began to set up a perimeter because the location that
24 the vehicle wrecked in was that of a triangle area,
25 kinda, and it was surrounded by road on all sides,

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1 and that area where he crashed, we just set up a
2 perimeter around that, that area.

3 Q. So when you got to the particular
4 location where the vehicle had come to a stop it
5 wasn't, what I would consider, a voluntary stop; it
6 was a crash?

7 A. It was a crash. Yes, Ma'am.

8 THE COURT: Where did he crash? What -
9 still on 113?

10 A. No, Sir. I, and I would, I would have
11 to - I'm not sure. I would have to, have to look at
12 the crash report, but he was on - there is - he was -
13 when you cross over Highway, off - from 113 when you
14 cross over Highway 25/70 that becomes Oak Grove Road,
15 I believe. Oak Grove Road T's into Birchfield Road
16 and the location that he crashed would indicate that
17 he turned right on Birchfield Road which is a
18 triangle, excuse me, that will bring you back to
19 25/70, thereby taking a right and completing a
20 circle, he was on 25/70 headed eastbound, and the
21 vehicle was on the right side of the road.

22 THE COURT: He crashed on 25/70?

23 A. Yes, Sir. At the intersection of
24 25/70 and Spring Creek Road.

25 THE COURT: And he crashed what, off to the

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1 right or...?

2 A. Off to the, off to the right, but
3 there was a - where Spring Creek Road and Highway
4 25/70 are, he crosses over off of the roadway.

5 Q. I have no further questions of this
6 witness, and I believe Mr. Leonard has something to
7 say to the Court.

8 MR. LEONARD: Your Honor, Mr. Rogers, at
9 this point, wants me to withdraw the motion, and I'll
10 do so at his request.

11 THE COURT: For whatever it's worth, I
12 concur fully. Thank you, Sir.

13
14 THIS CONCLUDES THE TESTIMONY OF KEVIN POE AS
15 PRESENTED IN THIS MATTER.
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1 THE COURT: And that would seem to end our
2 business, does it not?

3 MS. HEBETS: It does, Your Honor.

4 THE COURT: Okay. If nothing else, we
5 will...

6 CLERK: All rise. Court stands in
7 adjournment.

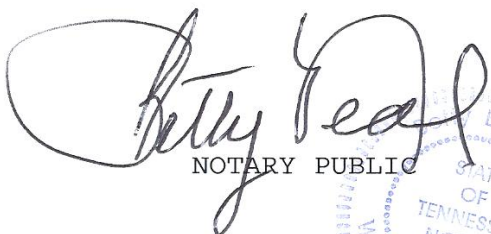

8
9 THIS COMPLETES ALL MATTERS AS PRESENTED IN THE
10 FOREGOING CASE.
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CERTIFICATE

I, Betty B. Neal, Notary Public and Court Reporter, hereby certify that the foregoing is a true and complete transcript of the PRETRIAL CONFERENCE AND MOTION HEARING as heard in the aforementioned case on the 7th of December, 2011.

WITNESS my hand and official seal at office at Gray, Tennessee, this the 30th of January, 2012.


NOTARY PUBLIC


My commission expires: November 3, 2015

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